IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 209 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHKUMAR PURUSHOTTAMDAS TANEJA - Applicant(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR BJ TRIVEDI for Applicant(s) : 1,MR JT TRIVEDI for Applicant(s) : 1,MS JIGNASA B TRIVEDI for Applicant(s) : 1,
Mr.K.P.Raval, A.P.P. for Respondent(s) : 1,
MR AK CHITNIS for Respondent(s) : 2 - 3.
MR MIHIR H JOSHI for Respondent(s) : 4 - 5.
MS NALINI S LODHA for Respondent(s) : 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 10/05/2007

1. The petitioner before this Court is the original complainant in the complaint being Inquiry Case no.64 of

2000 filed by him against respondents for the offence punishable under Secs380, 441, 120-B and 114 of the Indian Penal Code. The petitioner prays that by invoking jurisdiction of this Court under Sec.482 of the Code of Criminal Procedure, 1973, the order dated 31-1-2002 passed in Criminal Revision Application no.38/2001 at Exh.17 by the learned Additional Sessions Judge, Ahmedabad, City Civil & Sessions Court whereby the learned Sessions Judge had confirmed the order dated 19-12-2000 of the learned Metropolitan Magistrate, Court no.19, Ahmedabad dismissing the said complaint be quashed and set aside as the same is bad and unsustainable on the grounds mentioned in the memo of petition.

2. The respondents nos.1 and 2 are the son and mother respectively while the respondents nos.3 and 4 are the Manager & Regional Manager of the respondent-Development Credit Co-operative Bank Ltd. It was the case of the petitioner that a company was established in the year 1992 in the name and style of Ms. Paul-Tex Pvt.Ltd. in which Taneja Group to which complainant

belonged and the Paul group had 50% shareholdings each. According to the petitioner, the said Company had obtained loan of Rs.48 lacs from the said bank were the respondents nos.4 and 5 are the Manager and Regional Manager respective, that the petitioner stood guarantor to the said loan, that by using the said loan amount machineries were purchased and installed in the said Company and the Company was running smoothly. The machineries were hypothecated to the said bank. However, in the year 1995 differences cropped up between the side of the petitioner which included his witness Kishen Taneja who was the Director of the said Company in addition to the respondents nos.2 and 3, as a result of which, a Memorandum of Understanding was entered into between the two groups, according to which, the Paul Group took over the entire liability of the Taneja Group, and therefore, the liability of Taneja Group came to an end. Thus, according to the Memorandum of Understanding , the respondents nos.2 and 3 are liable to make the payment of bank loan. It is also alleged in the complaint that respondents nos.2 and 3 original accused promised and gave assurnce that as far as possible they

will make the payment of bank loan and as soon as they make the payment of the loan amount, the personal guarantee furnished by the petitioner would come to an end. However, the respondents nos.2 and 3 had not paid the loan amount, and hence respondents nos.4 and 5 filed suit before the Debt Recovery Tribunal for the recovery of the loan amount granted in favour of the said Company. During the pendency of the suit, the DRT passed order directing appoinment of Court Commissioner and the Court Commissioner submitted his report, according to which, the machineries etc. were lying the said Company. Thereafter, according to the petitioner, the machineries and stocks of the Company were found to have been disposed of by the respondents.2 and 3 at a lesser price by hatching a criminal conspiracy with the respondents nos.4 and 5 whereby it is alleged that the respondents nos.4 and 5 had made huge amount of illegal gains from the respondents nos.2 and 3. Under these circumstances, the petitioner lodged complaint being Inquiry Case no.64 of 2000 before the learned Metropolitan Magistrate, Ahmedabad, who ordered an investigation by Police Inspector, Vatva Police Station, Ahmedabad, under

Section 202 of the Cr.P.C. on 25-9-2000. The report of the investigation submitted on 11-10-2002 at Annexure “C” was to the effect that the said machineries were disposed of. The trial Magistrate also issued notice to the complainant and the complainant filed his reply at Exh.2 wherein it has been contended that as per the Panchnama prepared by the Police Officer, all the machineries etc. that were lying the in the premises of the said Company were sold at lesser price by the respondents ,and thereby, pocketed illegal gains. The complainant had, therefore, prayed that the complaint be sent for investigation under Section 156(1) of the Criminal Procedure Code. Ultimately, the learned Metropolitan Magistrate, Ahmedabad dismissed the said complaint on the ground that the petitioner may have recourse to civil law in respect of his liability as guarantor. Being aggrieved by and dissatisfied with the order of dismissal of the said complaint, the petitioner moved Criminal Revision Application no.38 of 2001 before the learned Additional Sessions Judge, Ahmedabad which also met with the same fate by order dated 31-1-2002. It is against this order of the learned Additional Sessions

Judge, Ahmedabad, that the petitioner has approached this Court by way of the present Special Criminal Application.

3. Heard learned Counsel Mr. J.T.Trivedi for the petitioner, learned A.P.P Mr. K.P.Raval, A.P.P. for the respondent no.1-State, learned Counsel Mr. Chitnis for the respondents nos.2 and 3 and learned Counsel Mr.Nalini Lodha for the respondents nos.4 and 5.

4. Learned Counsel Mr. J.T.Trivedi, has vehemently submitted that the learned Additional Sessions Judge, Ahmedabad had without consider the factual background and the documents on record, confirmed the order passed by the learned Metropolitan Magistrate, Ahmedabad, and therefore, the same is bad and unsustainable in the eye of law. According to the learned Counsel, the petitioner is entitled to the benefit of the securities created by the Company(Paul-Tex. Pvt.Ltd. by way of hypothecation in favour of the bank. According to the learned Counsel the securities were sufficient for satisfying the debt of the bank, and therefore, the machineries could not have been

disposed of. The learned Counsel further submitted that when the petitioner himself has interest in the machineries etc. the disposal even by the owners-respondents nos.2 and 3 would constitute offence of theft. The learned Counsel then submitted that in case of hypothecation as in the present case the possession is legally that of the hypothecatee-bank and custody is only that of the party which has created hypothecation, and therefore, no disposal is permissible under law except with the permission of the bank. According to the learned Counsel, the respondents nos.2 and 3 having disposed of the machineries had committed offence of theft and that the learned Magistrate has failed to appreciate this aspect of the matter, and as such committed error in dismissing the complaint. Mr. Trivedi has finally submitted that there was no inquiry and it was only investigation that was ordered by the learned Magistrate, and hence, it cannot be said that thorough inquiry was held.

5. In support of his aforesaid contentions, learned Counsel Mr.Trivedi has placed reliance on the following

authorities:

(i) A.R.Antulay v. Ramdas Sriniwas Nayak and another reported in (1984) 2 SCC 500,
(ii) The State Bank of Saurashtra . Chitranjan Rangnath Raja and Anr. Reported in AIR 1980 SC 1528.
(iii) Gujarat Industrial Investment Corpn.Ltd. v. Shri Kiritbhai Manibhai Patel & Ors. 1983 G.L.H. (U.J.) 13.
(iv) N. Natarajan v. B.K.Subba Rao reportd in (2003) 2 SCC 76.
(v) Meena (Smt.) W/o. Balwant Hemke v. State of Maharashtra reported om (2000) 5 SCC 21.

6. This Court has carefully gone through the ratio laid down in the aforesaid decisions, however, the facts of the present case being entirely different from the facts of the cases relied upon by Mr. Trivedi, these authorities cannot be of any help to the petitioner.

7. Learned Counsel Ms.Nalini Lodha for the respondents nos.4 and 5 submitted that a bare reading of the Memorandum of Understanding makes it clear that after 1995, the entire liability along with the machineries were taken over by Paul Tex Pvt.Ltd to which the respondents nos.2 and 3 belonged by way of an MOU , and therefore, the petitioner has right or interest over the

Company or the movable or immovable properties of the Company. The learned Counsel further submitted that the concerned bank had filed a suit before the Debt Recovery Tribunal and that the entire transaction is of a civil nature, and as such, the order passed by the Courts below are quite legal and proper, calling for no interference at the hands of this Court.

8. This Court has examined the submissions made by both the sides, the complaint and the orders passed by the two Courts below. Admittedly, in the year 19995 by way of an MOU, the Company along with all the liabilities including machineries etc. were taken over by the Paul-Tex Pvt.Ltd belonging to the side of the respondents nos.2 and 3, and therefore, the petitioner cannot have any right over the Company or the machineries etc. installed therein after 1995 as the petitioner has resigned from the Company voluntarily. In view of this, the submission of Mr. Trivedi that as per the report of the Police Officer there was seal of Bank of Baroda in the shed were the machineries were installed they could not make inquiry regarding the machineries etc. or that there was no thorough inquiry is immaterial. It is also pertinent to note

that a suit is filed before the DRT where the proceedings are pending.. The petitioner has entered into the MOU in the year 1995 while the complaint was lodged way back on 25-9-2000. No details are mentioned in the complaint as to how and in which manner the machinery was disposed of by the respondents nos.2 and 3 in collusion with the respondents nos.4 and 5. It is worthwhile to mention here that the learned Sessions Judge has observed in the order that along with the complaint no MOU was annexed. When the respondents nos.2 and 3 were in possession and ownership of the said machinery along with the Company and if the machineries etc. are disposed of by the respondents nos.2 and 3, it cannot be labelled as an offence of theft having been committed by them. There is no evidence worth the name on record except the mere allegation to show that the respondents nos.2 and 3 with an ulterior motive with the aid of the respondents nos.4 and 5 had disposed of the machineries etc. as alleged in the complaint. This Court while exercising powers under Section 482 Cr.P.C. Does not function as a Court of appeal or revision. Inherent jurisdiction under the Section though wide has to be

exercised sparingly, carefully and with caution and it can be exercised only to do real and substantial justice for the administration of which alone Courts exist. In the present case, reading the complaint as a whole, this Court is of the view that no offence is made out even if the allegations made in the complaint are accepted in toto. The owners themselves have disposed of the machineries etc. as alleged in the complaint and the petitioner being only a guarantor at the time of the alleged offence cannot make any grievance. No relief can be granted to the petitioner on any of the grounds urged before this Court. No other point is raised.

9. For all these reasons, the learned Additional Sessions Court was perfectly justified in holding that the the petitioner may have recourse to civil proceedings for redressing his grievances as a guarantor. The petition is devoid of any merit and is accordingly dismissed. Rule discharged.

(M.D.Shah,J.)

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